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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/371,769	08/10/1999	ERWIN HACKER	514413-3765	9638

20999 7590 12/15/2003

FROMMER LAWRENCE & HAUG  
745 FIFTH AVENUE- 10TH FL.  
NEW YORK, NY 10151

EXAMINER
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PRYOR, ALTON NATHANIEL

ART UNIT	PAPER NUMBER
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1616

DATE MAILED: 12/15/2003

22

Please find below and/or attached an Office communication concerning this application or proceeding.

# Office Action Summary

Application No.

09/371,769

Applicant(s)

HACKER ET AL.

Examiner

Alton N. Pryor

Art Unit

1616

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

## Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

## Status

- 1) ☐ Responsive to communication(s) filed on 22 September 2003.
- 2a) ☐ This action is **FINAL**. 2b) ☒ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

## Disposition of Claims

- 4) ☐ Claim(s) 13-28 is/are pending in the application.
- 4a) Of the above claim(s) 16, 17 and 19 is/are withdrawn from consideration.
- 5) ☐ Claim(s) 23 and 24 is/are allowed.
- 6) ☐ Claim(s) 13-15, 18, 20-22 and 25-28 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

## Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.  
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).  
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

## Priority under 35 U.S.C. §§ 119 and 120

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).  
a) ☐ All b) ☐ Some \* c) ☐ None of:  
1. ☐ Certified copies of the priority documents have been received.  
2. ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.  
3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).  
\* See the attached detailed Office action for a list of the certified copies not received.
- 13) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application) since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.  
a) ☐ The translation of the foreign language provisional application has been received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121 since a specific reference was included in the first sentence of the specification or in an Application Data Sheet. 37 CFR 1.78.

## Attachment(s)

- 1) ☒ Notice of References Cited (PTO-892) 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948) 5) ☐ Notice of Informal Patent Application (PTO-152)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_ 6) ☐ Other: \_\_\_\_\_

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### DETAILED ACTION

I. Rejection of claims 13-15,18,20-22,25,26 under 35 USC 103(a) over Ruegg (US 2001/0044382 will not be maintained in light of amendment filed 9/22/03.

Applicant's arguments with respect to claims 13-15,18,20-22,25,26 have been considered but are moot in view of the new ground(s) of rejection.

#### ***Claim Rejections - 35 USC § 102***

The following is a quotation of the appropriate paragraphs of 35 U.S.C. 102 that form the basis for the rejections under this section made in this Office action:

A person shall be entitled to a patent unless –

(e) the invention was described in a patent granted on an application for patent by another filed in the United States before the invention thereof by the applicant for patent, or on an international application by another who has fulfilled the requirements of paragraphs (1), (2), and (4) of section 371(c) of this title before the invention thereof by the applicant for patent.

The changes made to 35 U.S.C. 102(e) by the American Inventors Protection Act of 1999 (AIPA) and the Intellectual Property and High Technology Technical Amendments Act of 2002 do not apply when the reference is a U.S. patent resulting directly or indirectly from an international application filed before November 29, 2000. Therefore, the prior art date of the reference is determined under 35 U.S.C. 102(e) prior to the amendment by the AIPA (pre-AIPA 35 U.S.C. 102(e)).

Claims 13,15,18,20,21,25,26 are rejected under 35 U.S.C. 102(e) as being anticipated by Ruegg et al (US 6180563; 1/30/01). Ruegg teaches a method of controlling the growth of weeds in cotton crop comprising applying to cotton plants a herbicide composition comprising glufosinate plus pyriproxyfen-sodium. See abstract, column 2 lines 44-50, column 12 lines 9-16, column 19 line 55 – column 20 line 31,

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column 21 lines 6-13. Ruegg teaches that glufosinate can exist in salt form. See claim 1. Ruegg teaches that the composition can comprise adjuvants (auxiliaries). See column 21 lines 16-24. Ruegg teaches that the composition can comprise additional actives. See abstract. Ruegg teaches a method of applying the composition pre- or post- emergently to cotton plants. See column 19 line 55 – column 20 line 31. It is inherent that the prior art method of application would influence the yield of cotton plants since both the prior art and instant application method is identical.

***Claim Rejections - 35 USC § 103***

The following is a quotation of 35 U.S.C. 103(a) which forms the basis for all obviousness rejections set forth in this Office action:

(a) A patent may not be obtained though the invention is not identically disclosed or described as set forth in section 102 of this title, if the differences between the subject matter sought to be patented and the prior art are such that the subject matter as a whole would have been obvious at the time the invention was made to a person having ordinary skill in the art to which said subject matter pertains. Patentability shall not be negated by the manner in which the invention was made.

Claims 27,28 are rejected under 35 U.S.C. 103(a) as being unpatentable over Reugg (US '563) and Ruegg (US 5965486; 10/12/99). Ruegg (US '563) teaches all that is recited by claims 27,28 except for the invention comprising the ammonium salt of glufosinate. See 35 USC 102(e) rejection. However, Ruegg (US '486) teaches a method of controlling weed growth in cotton plants comprising applying a composition comprising glufosinate-ammonium to the crop. See column 1 lines 1-54. It would have been obvious to one having ordinary skill in the art to modify the invention of Ruegg (US '563) to include the glufosinate-ammonium taught by Ruegg (US '486). One would have been motivated to do this in order to develop an invention that would have been most

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effective in controlling weed growth in cotton plants and because Ruegg (US '563) teaches the use of glufosinate in salt form.

Claims 13-15, 18, 20-22, 25, 26 are rejected under 35 U.S.C. 103(a) as being unpatentable over Ruegg et al (US 5965486; 10/12/99) and Tymonko (US 4822401; 4/18/89). Ruegg teaches a method of controlling the growth of weeds in cotton crop comprising applying to cotton plants a herbicide composition comprising glufosinate-ammonium plus a compound of formula I (additional active). See abstract, column 1 lines 1-62, column 2 lines 64-67, column 3 lines 1-35. Ruegg teaches that the composition can comprise formulation assistants (auxiliaries). See column 3 lines 51-58. Ruegg teaches a method of applying the composition pre- or post- emergently to cotton plants. See column 1 lines 56-62. Ruegg does not teach the invention comprising clomazone. However, Tymonko teaches a method of controlling the growth of weeds in cotton crop comprising applying to cotton plants a herbicide composition comprising clomazone plus organophosphorus pesticide (additional active). See abstract, column 1 lines 41-60, column 3 lines 5-7, column 4 lines 14-30, column 7 lines 4-58, column 8 lines 24-34. Tymonko teaches a method of applying the composition pre- or post- emergently to cotton plants. See column 8 lines 61-67. It would have been obvious to one having ordinary skill in the art to combine the prior art inventions. One would have been motivated to do this in order to develop the most effective invention for controlling weed growth in cotton plants.

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***Allowable Subject Matter / Election Status***

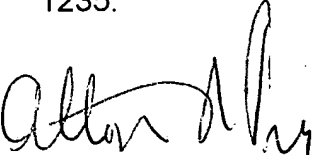
Claims 23 and 24 are allowable. Applicant provides unexpected data for the composition comprising glufosinate-ammonium plus cycloxydim. The elected invention comprising glufosinate-ammonium plus pyriithiobac is not allowable. See art rejections above.

***Telephonic Inquiry***

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Alton N. Pryor whose telephone number is 703 308-4691. The examiner can normally be reached on 8:00 a.m. - 4:30 p.m..

If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Thurman Page can be reached on 703-308-2927. The fax phone number for the organization where this application or proceeding is assigned is 703 305-3592.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is 703 308-1235.

  
ALTON N. PRYOR  
PRIMARY EXAMINER  
Alton Pryor  
Primary Examiner  
AU 1616